HON'BLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION NO. 19487 OF 2006

DATE: 07.09.2007

Between:

A. Janaki Bai, W/o Late A. Anantha Raj

...Petitioner

AND

1. The Senior Postmaster, Khairatabad Head Post Office, Hyderabad

.....Respondent

HON'BLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION NO. 19487 OF 2006

ORAL ORDER:

This Court ordered Rule Nisi and call for records on 7.6.2007. A counter affidavit is filed by the respondent. The matter appears under the caption 'interlocutory'. With the consent of both the counsel the Writ Petition is being disposed of finally.

The Writ Petition is filed for a Writ of Mandamus or any other appropriate Writ, order or direction, declaring the action of the respondent in not paying the amount against the Kisan Vikas Patras (i) 50CC 59088 and (ii) 50 CC 59089 in the name of Master A. Narsing Rao and fiave Kisan Vikas Patras bearing Nos. 50CC 59098 to 50CC 590987 in the name of Kum. A.Sai Latha immediately after their maturity or in not renewing them for further period to avoid loss of interest and further direct the respondent to pay the matured amount together with interest as on the date of payment to the petitioner or to renew the said Kisan Vikas Patras for further minimum period from the date of their maturity i.e. from 30.6.2005 with the same interest and pass such other order or orders as may deem fit and proper in the circumstances of the case.

It is stated that the petitioner is legally wedded wife of late Sri A. Anantha Raj and she begot two children namely Master A. Narsing Rao and Kum. A. Sai Latha. It is also stated that due to their bad luck her husband Sri A. Anantha Raj died on 28.4.1999. After the death of her husband, she was totally depending on her brother-in-law i.e., husband's younger brother Sri A. Prakash for all the things and she had totally believed him since he was brother of her deceased husband. It is also stated that after the death of her husband an amount of Rs. 1,00,000/- was paid by the District Collector, Hyderabad, under Apad Bandu Scheme. She has handed over the cheque for Rs. 1 lakh to her brother-in-law Sri A.Prakash. He got opened a bank account in her name and obtained signatures on blank printed forms taking advantage of her innocence and withdrawn the entire amount of Rs. 1 lakh. On knowing about the withdrawal, she has enquired with her brother-in-law. Then he had stated that he would be depositing the said amount in the good scheme for the welfare of her two children. Thinking that it is for the betterment of her children she kept quite.

It is further stated that subsequently, on her asking, her brother-in-law handed over the following Kisan Vikas Patras purchased in the name of her two children. The same worth Rs. 70,000/- and balance of Rs. 30,000/- was utilized by her brother-in-law.

Sl.No.	Number of patra	name of which it stands
1.	50CC 59088	A. Narsing Rao

2.	50CC 59089	A. Narsing Rao
3.	50CC 590983	A. Sai Latha
4.	50CC 590984	A. Sai Latha
5.	50CC 590985	A. Sai Latha
6.	50CC 590986	A. Sai Latha
7.	50CC 590987	A. Sai Latha

All the patras are for Rs. 10,000/- each and all are dated 30.6.1999.

It is also stated that her brother-in-law played fraud while taking the Kisan Vikas Patras with a malafide intention and got mentioned his name as father of her children instead of keeping the amount under her guardianship.

It is further stated that on coming to know about the said fraud committed by her brother-in-law, she had given letter dated 14.7.2000 requesting the respondent to incorporate her name in place of Sri A. Prakash. But there was no reply or the same was not considered. Therefore, she has filed O.S.No. 4269 of 2000 on the file of the Hon'ble VIII Junior Civil Judge, City Civil Court, Hyderabad, seeking a declaration that Sri A. Prakasham is not the father of her children and to direct the respondent herein who was 1st defendant in the suit to delete the name of Sri A. Prakash from the originals of Kisan Vikas Patras and enter her name as guardian. She also sought a direction to the respondent herein to pay the amount after the Kisan Vikas Patras have matured.

It is also stated that the suit filed by the petitioner was decreed in part on 24.3.2003 (P-2). The direction to this respondent to make payment was dismissed holding as : "This Court cannot grant such relief when there is no allegation against the first defendant in regard to non-payment of the amount of the Kisan Vikas Patras. As a matter of fact it is clear from the pleadings that the Vikas Patras are not Placed before the first defendant for encashment."

It is also further stated that the dismissal of the said prayer is only for the simple reason that there was no allegation that she has not placed before the respondent for encashment. She could not claim encashment of the Kisan Vikas Patras as they were not matured by that time, as such the Hon'ble Civil Court had taken the said view.

It is further stated that the Kisan Vikas Patras have matured on 30.6.2005 and thus the respondent had to pay the amount on 1.7.2005. Therefore, she had approached the respondent to make the payment or to extend the period on my children's name for a further period, but the respondent did not do so. Therefore, she had given a representation dated 27.8.2005 to the respondent requesting him to make the payment. But there was no reply for the same and no payment was made.

It further stated that after number of personal visits to the respondent even after she gave her representation, she got issued a notice dated 13.2.2006 clarifying the

situation and demanding the payment. The respondent had issued a letter dated 20.2.2006 stating that the matter had been taken up with higher authorities for course of action. It also stated that the respondent had issued the impugned letter dated 13.2.2006 stating that the same cannot be paid in view of the dismissal of the prayer. Questioning the same, the present Writ Petition is filed raising several grounds.

A counter affidavit is filed by the respondent denying the stand that the following KVPs were purchased by Sri A. Prakash in the names of the following Minors noted against each from Khairatabad HO.

Sl.No. of Certificate	Date of issue	Face value	Name of the purchaser	Remarks
50 cc590983 to 987 =5	30.6.99	10,000x5 = 50,000/-	A.Sailatha (minor) D/o A.Prakash H.No. 6-3-305 Balapuram Basti I, M Colony, Hyderabad	Regn No. 7316
50cc590988 to 989 =2	30.6.99	10,000x2 = 20,000/-	A. Narasingarao S/o A Prakash 6-3-305 Balapuram Basti, 1 M Clny, Hyd.	Regn No. 7317

Thus, Sri A. Prakash on behalf of the above two minors, stating that they were his daughter/son had purchased KVPs worth 70,000/-.

It is also stated that a Civil Case bearing No. O.S.No. 4269/2000 on the file of 8th Junior Civil Judge, Hyderabad, had come up in the year 2000 on the above issue complaining that Smt. A. Janakibai was the mother of the above said two minor children in whose favour the KVPs worth Rs. 70,000/- were purchased, that the said sri A. Prakash who purchased the Certificates declaring that he was the father of the above said children but not actual father but brother-in-law, that the actual father of the children was late Sri Anantharaj; that the said Sri A.Prakash had with a bad and ill motive mentioned his name and got them registered with the Post Office records as father of the children; that she is afraid that, she and her children may be duped and deceived by the said A.Prakash in future. Therefore, the name of the father recorded in the purchased certificates and registered in Post Office records be corrected and changed to as Late Sri A.Anantharaj in the place of A. Prakash. Accordingly the Hon'ble VIII Junior Civil Judge, City Civil Court had issued a decree on 24.3.2003 declaring that the father's name appearing in the above said certificates and records

with Post Office be changed as Late Sri A. Anantharaj in the place of A. Prakash. The Hon'ble Lower Court further declared that the amount on maturity of Certificates is not to be paid either to Sri A. Prakash or the mother -Plaintiff Smt. A. Janakibai. The Hon'ble Court did not mention anything in the judgment about the person to whom the maturity value of the certificates is to be paid in fact all the (7) certificates were matured by 30.6.2005 and payable on or after 30.6.2005.

It is further stated that in pursuance to Hon'ble Court Judgment dated 24.3.2003, the respondent (sr. Postmaster, Khairatabad) complied with the following:

(1) Name of father appearing in PO records relating to certificates bearing no. 50CC 590983 to 987 (held by A. Sailatha (minor) was changed from A. Prakash to late Sri A. Ananthraj.

(2) The payments held up on maturity since there was no direction from the Hon'ble Lower Court as to whom the payment is to be made.

The respondent (Khairatabd HO) could not comply with the Court judgment in respect of the following points.

(a) change of father's name as Late Sri A. Ananthraj in place of Sri A. Prakash in respect of certificates held by Master A. Narsingrao (minor) could not be changed in the relevant certificates since these two certificates were transferred by the said A. Prakash to the name of Sunil Kumar Ahuja on behalf of minor holder Master. A. Narsingrao before the pronouncement of the judgment in the lower court.

(b) In the above said Civil Case having been pretty aware of the litigation pending in the Court from January, 2000 Sri A. Prakash intentionally and with fraudulent view had transferred these two certificates by an application dated 23.10.2001 to the name of Sunil Kumar Ahuja and this was allowed by the respondent when the case was pending with the said Lower Court. Therefore, the name of the father appearing in the said two certificates 590988, 590989 purchased in the name of A. Narsing Rao by Sri A. Prakash Could not be changed as directed by the Court as late Sri A. Anantharaj. In fact, the minor holder A. Narsingrao and the guardian A. Prakash had no claim in respect of the above said two certificates worth Rs. 20,000/- on account of this transfer. On receipt of Court Orders this Office had served a notice on 16.3.2006 to the advocate of transferee Sri Sunil Kumar Ahuja informing that the actual guardian of two certificates is Smt. A. Janakibai and not Sri A. Prakash and transferer Sri A. Prakash had no right to transfer the certificate to the said Sri L. Sunil Kumar Ahuja and therefore these certificates are to be preserved in the PO for cancellation and for issue to the rightful owners. There was no

response from the transferee or his advocate.

It is also stated that the petitioner had filed a Civil Case O.S.No. 4269/2000 in Hon' ble City Civil Court 8th Hyderabad, against the respondent i.e., Sr. Postmaster, Khairatabad HO in the year 2000 for not paying the maturity amounts of KVPs. In fact, the Hon'ble 8th City Civil Court, Hyderabad, vide its judgment dated 24.3.2003 in para 11 of its judgment and in item 3, the Hon'ble Judge opined 'the claim of the plaintiff (Smt. A. Janakibai) to direct the first defendant (Sr. PM, Khairatabad) for making the payment of the suit schedule Vikas Patras to the Plaintiff is dismissed". In view of this fact, the respondent could not pay the amounts and the same was also informed to the plaintiff vide letter No. APM/SBHO/CO/06 dated 16.3.2006.

It is also stated that the plaintiff Smt. A. Janakibai was declared as the rightful guardian of these two minors in the absence of their father Sri A. Anantharaj who already died and Smt. A. Janakibai will become the rightful claimant of these KVPs. Now, the respondent (Sr. PM, Kahairatabad HO) is ready to pay the proceeds of the above KVPs with eligible interest as per the Dept. rules and regulations, if so ordered by this Hon'ble High Court.

It is further stated that it is a fact that the following KVPs were purchased on 30.6.1999 from Khairatabad HO on application from Sri A. Prakash, H.No. 6-3-305, Balapuram Basti, IM Colony, Hyderabad, in the name of 2 minor children as detailed below:

(i) A. Sailatha - DOB - 12.3.1994

(ii) A. Narsing Rao - DOB - 28.7.1992

In the application it was mentioned that Sri A. Prakash was the father of Master A. Narsingrao and Baby A. Sailatha.

It is further submitted that seven certificates were matured by 30.6.2005 and due for payment on presentation. But due to pendency of this O.S. in the Hon'ble Lower Court Hyderabad, the respondent was unable to pay the same. In the meanwhile, Sri A.Prakash defendant No. 2 in O.S.No. 4269 of 2000 of the above said Lower Court, through his application dated 23.10.2001 had applied for transfer and got the following 2 KVPs transferred to the name of Sunil Kumar Ahuja with deceptive and fraudulent intention against the petitioner through respondent (Sr.PM, Khairatabad) on 23.10.2001 which should not have been allowed by the respondent. Yet it was done for one reason or the other. This transfer transaction was taken place at the behest of intentional fraudulent action by Sri A. Prakash who knows the facts fully. In view of the lower Court Judgment making its petitioner as legal guardian, the respondent is ready to pay proceeds of the certificates with eligible interest beyond the date of maturity, if so ordered by the Hon'ble High Court.

It is further submitted that it is a fact but in view of restriction in the lower Court judgment, the respondent could not comply with her request and at the same time the same lower Court made the petitioner as the legal guardian of these two minors. The respondent is now ready to pay the proceeds of the KVPs if so ordered by the Hon'High Court with eligible post maturity interest as per Departmental Rules.

It is also submitted that it is a fact that the application dated 27.8.2005 in the Postmaster's Office. The Judgment dated 24.3.2003 in O.S No. 4269 of 2000 from the Hon'ble VIII Civil Judge, City Civil Court, Hyderabad, there was a direction not to pay the amount to the petitioner as such no action was taken on her application. However, when a Legal Notice dated 13.2.2006 on behalf of the petitioner was received on 16.2.2006, she was informed through her lawyer on 16.3.2006 of inability of PO in view of restriction from the Court. Now in view of lower Court Judgment making its petitioner as legal and real guardian, the respondent is ready to pay proceeds of the certificates if so ordered by the Hon'ble High Court with eligible post maturity interest.

It is also further stated that there is no objection to the respondent (PM, Khairatabad HO) for payment of maturity value added with eligible post maturity interest in respect of the following KVPs held in the name of A. Sailatha minor-DOB 12.3.1994 to the petitioner Smt. A. Janakibai provided the Hon'ble High Court issue suitable directions striking down the directions of the Hon'ble Lower Court.

Certain factual details also narrated in paragraph 15 and a request was made that the Writ Petition may be disposed of in the light of the stand taken in the counter affidavit.

The stand taken by the parties and the other facts are not in controversy and since the respondent has no objection at all to grant relief prayed for by the petitioner despite the fact that the same relief had been negatived under peculiar facts and circumstances in the suit, this Court is inclined to allow the Writ Petition granting relief as prayed for.

Accordingly, the Writ Petition is hereby allowed. No order as to costs.

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P.S. NARAYANA, J

Date: 07.09.2007
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